United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

202

NO. 21433

WALTER E. HOUGH,

Appellant,

V.

UNITED STATES OF AMERICA,

Appellee.

Appeal From The United States District Court
For The District of Columbia

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March 4, 1968

STATEMENT OF QUESTIONS PRESENTED

I

Whether in a prosecution for uttering (a forgery count having been dismissed at the Government's request) the Government must establish that the signature of the purported payee and endorser was not authorized by him.

II

Whether the trial judge erred in his ruling that allowed a prosecution witness to bring to the jury's attention statements concerning an increase in the number of stolen money orders being offered in the District of Columbia.

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STATUTES

IN THE
UNITED STATES COURT OF APPEALS
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NO. 21433

WALTER E. HOUGH,

Appellant,

V.

UNITED STATES OF AMERICA,

Appellee.

Appeal From The United States District Court
For The District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Appellant was indicted in a two count indictment filed June 27, 1966. The first count charged a violation of the District of Columbia Code, Section 22-1401, in that Appellant allegedly falsely made and forged, with intent to defraud, an American Express Company Money Order. The second count also charged a violation of Section 22-1401 in that Appellant allegedly passed and uttered to David E. Klein a forged American Express Company Money Order (Indictment, G.J. No. 81766, June 27, 1966). Appellant was tried in the United States District Court for the District of Columbia, in a trial by

jury which began August 2, 1967. The first count was dismissed immediately after the Government's opening statement (Tr. 8). At the conclusion of the Government's case, the defendant moved for a judgment of acquittal on the ground that the facts presented were insufficient to support the indictment (Tr. 87). At the close of all the evidence the motion for acquittal was renewed and again denied (Tr. 137). Appellant was ordered imprisoned for a period of sixteen (16) months to four (4) years (Judgment and Commitment, filed October 17, 1967). Permission to appeal in forma pauperis was ordered October 16, 1967. The jurisdiction of this Court is invoked under Title 28, Section 1291, United States Code.

STATEMENT OF THE CASE

Appellant together with his wife asked an unidentified employee in Morton's Department Store, 314 Seventh Street, N.W., Washington, D. C., if he could cash an American Express Money Order (Tr. 116). Appellant was escorted to the office of the manager, Mr. Klein, where the money order, payable to the order of Ronald Steven Williamson and bearing an endorsement reading "Ronald Steven Williamson" was brought to the attention of the manager (Tr. 117). Appellant also presented a Maryland driver's license issued to a Ronald Steven Williamson (Tr. 15). Upon noting a variance between the physical description of Appellant and the descriptive information contained in the driver's license, the manager called the police (Tr. 14, 15). Appellant was taken to the office of the Police

Check & Fraud Squad in the Municipal Building where both he and his wife were questioned. There is a conflict in the transcript as to the actual time and place of the arrest (Tr. 36, 74). In any event, Appellant was arrested and confined in jail. His wife was released.

Subsequent to the arrest, certain other American Express Money Orders were found in a commode in the Men's Room near the Check & Fraud Squad Office (Tr. 59). Appellant had used the same Men's Room shortly after arriving at the Check & Fraud Squad Office (Tr. 120). A Government witness, the janitor, testified that he found the money orders in the commode immediately after its use by Appellant (Tr. 59, 62). Each of the money orders found in the commode was signed "Ronald Steven Williamson" (Tr. 85).

A Ronald Steven Williamson testified as a witness for the Government that he possessed a driver's license similar to the one exhibited by Appellant (Tr. 84). Witness Williamson further testified that his current driver's license was a duplicate, the original never having been received by him (Tr. 84). There was a stiuplation that the signature "Ronald Steven Williamson" on the various money orders introduced in evidence was not that of Witness Ronald Steven Williamson (Tr. 85).

STATUTE INVOLVED

Title 22, District of Columbia Code (1967 Edition)

§ 22-1401. Forgery.

> "Whoever, with intent to defraud or injure another, falsely makes or alters any writing of a public or private nature, which might operate

> to the prejudice of another, or passes, utters, or publishes, or attempts to pass, utter, or publish as true and genuine, any paper so falsely made or altered, knowing the same to be false or forged, with the intent to defraud or prejudice the right of another, shall be imprisoned for not less than one year nor more than ten years."

STATEMENT OF POINTS

I

In a prosecution for the criminal offense of uttering, the duty is upon the prosecution to establish that the signature or signatures which it alleges are either falsely made or altered were not authorized by the purported payee and endorser.

II

In a prosecution for the offense of uttering, it was improper and prejudicial to the defendant, to permit a prosecution witness to testify regarding an alleged current rash of instances in which stolen money orders were uttered.

SUMMARY OF ARGUMENT

I

The testimony of Ronald Steven Williamson, witness for the Government, failed to establish that he did not authorize the signature "Ronald Steven Williamson" on the American Express Money Order allegedly uttered by Appellant. The Government had the burden of proving that the signature "Ronald Steven Williamson" was not authorized by its witness, Ronald Steven Williamson.

II

The trial court erred in permitting, over objection, the testimony of a prosecution witness that business establishments in the District of Columbia were experiencing the tendering of numerous stolen money orders, that his business establishment had been successful in apprehending three persons who had stolen hundreds of such orders and that all of his sales personnel had been alerted to the possible tendering of a stolen money order. The introduction of this evidence was prejudicial to the appellant and constitutes a reversible error.

ARGUMENT

Point I

The District of Columbia Code Section 22-1401 which Appellant is convicted of violating, clearly sets forth the basic elements of the offense of forgery by uttering. One of these elements is that the uttered instrument must be "falsely made or altered." The instrument cannot be true and genuine.

The only evidence which tends to show that the money order (Government Exhibit 1) was either "falsely made or altered" is the testimony of a Government witness, Ronald Steven Williamson, who had the same name as the one which appeared on the money order. "Ronald Steven Williamson" was also the name on the driver's license which Appellant presented to an employee at Morton's Department Store. Mr. Williamson testified as follows:

"Q. [By Theodore Wieseman, Esq., Assistant United States Attorney] I show you Government's Exhibit No. 1 for identification. Do you see the signature at the top "Ronald Steven Williamson"?

"A. Yes, sir.

"Q. Did you write that, sir?

"A. No sir, I did not.

"Q. Would you turn it over and look at the endorsement on the back, sir. Did you write Ronald Steven Williamson on the back of that?

"A. No, sir. I use my initial, not Steven, when I sign my signature."
(Tr. 84, 85).

After a stipulation that the witness did not sign the money order in Government Exhibit 1, the Government tendered the witness for cross-examination (Tr. 85). There was none. A stipulation was made that if a handwriting expert were called, he would testify that Appellant did not sign the money order (Tr. 87). At this point the Government rested.

Mr. Williamson was the only witness the Government introduced in an attempt to prove that the American Express Money Order (Government Exhibit 1) was "falsely made or altered." He simply testified that he did not sign the name "Ronald Steven Williamson" on the money order. The important point is that Witness Williamson was not asked if he had authorized the signature on the money order.

A motion for acquittal was made and rejected. It should be noted that a similar motion was made at the close of all the evidence and it was also rejected. This was a reversible error for

the fundamental reason that the Government failed to establish that the signature of "Ronald Steven Williamson" was not authorized by the witness Ronald Steven Williamson. See, United States v. Stradley, 295 F. 2d 33 (4th Cir. 1961). It is not sufficient in proving the basic element, "falsely made or altered" to merely show that the signature (or signatures) was not that of the purported payee. There must be evidence that the signature was not authorized by the purported payee. Johnson v. State, 370 S.W. 2d 610 (Sup. Ct. Ark. 1963); see Turner v. State, 176 S.W. 2d 327 (Ct. App. Texas 1943).

In the instant case, the Government did not prove that the signature "Ronald Steven Williamson" was done by the Appellant. As previously stated, it stipulated that the signature was not Appellant's. Obviously, the signature was made by some other person. The record fails to identify such other person. In fact, there is not the remotest clue as to the identity of the author of the signature "Ronald Steven Williamson." Thus, two points are clear and unrefutable. The Appellant did not affect the signature "Ronald Steven Williamson" and the Government witness "Ronald Steven Williamson" did not sign the money order.

Since the Government saw fit to produce a "Ronald Steven Williamson" to testify that he did not personally effect the signature, the Government accordingly reached the position in which it was obligated to show that its witness, Ronald Steven Williamson, did not authorize the signing of the name "Ronald Steven Williamson" to the allegedly uttered money order.

In State v. Gorham, 48 P. 2d 447 (Sup. Ct. Utah 1935) which involved the dismissal of a count of forgery and the appeal of a conviction of uttering, the Supreme Court of Utah reversed the conviction and held that the trial court erred in denying a motion to dismiss. It is interesting to note the similarity between portions of the testimony of the purported maker a Mr. Bringhurst, in the Utah case and that of Ronald Steven Williamson in this proceeding. As the Court noted in its opinion, Mr. Bringhurst testified as follows: "I did not issue the draft. The signature at the bottom of the draft is not my signature." 48 P. 2d 447, 448.

The Court stated:

> "It will thus be seen that there is nothing in the testimony of the witness, whose name it is claimed to have been forged, to indicate that he had not authorized another to sign the said draft for him. Nor is there any evidence in the case that the said draft was not authorized by the person whose name it bears." 48 P. 2d 447, 448

The Supreme Court of Utah went on to state that it was

> ". . . committed to the doctrine that to establish falsity it must be shown not only that the person whose name is signed to the instrument in question did not sign it, but also that his name was signed without his authority." 48 P. 2d 448.

In State v. Charles D. Phillips, 256 N.C. 445, 124 S.E. 2d 146 (1962), the defendant was convicted of forgery and appealed. The Supreme Court of North Carolina reversed the conviction stating:

> "The State makes no showing that the signing of the check was unauthorized and false. The court should have allowed the motion to nonsuit.: 124 S.E. 2d 149.

The Supreme Court of North Carolina also stated:

> "If the name signed to a negotiable instrument or other instrument requiring a signature, is fictitious, of necessity, the name must have been affixed by one without authority, and if a person signs a fictitious name to such instrument with the purpose and intent to defraud--the instrument being sufficient in form to import legal liability--an indictable forgery is committed. However, if the purported maker is a real person and actually exists, the State is required to show not only that the signature in question is not genuine but was made by defendant without authority." 124 S.E. 2d at 148.

It is the contention of Appellant that in order for him to be guilty of the charge of uttering under Section 22-1401 of the Code of the District of Columbia, the Government had the burden of proving that the money order allegedly uttered was either falsely made or altered. Further, that where the Government introduced its witness, Ronald Steven Williamson, to testify that the signatures "Ronald Steven Williamson" on the money orders were not signed by him, the Government should have also proven that the witness Ronald Steven Williamson did not authorize the signatures in question. Failing to do so, the Government did not establish one of the basic elements of the offense.

Point II

Witness for the Government, Mr. Klein, manager of Morton's Department Store, attempted to volunteer information concerning notices received from the Credit Bureau (Tr. 13). Attorney for Appellant objected and the court properly sustained the objection (Tr. 13).

However, on cross-examination, when the attorney for Appellant was attempting to ascertain the name of the salesperson to whom the Appellant allegedly presented the money order, Mr. Klein testified as follows:

> "Q It is my understanding from what you have said that you don't know what the young lady's name was who talked with Mr. Hough before you did.
>
> "A No. Let me explain one thing if you will allow me to. We have been, as I have said before, and everyone in my store that ever looks at a check have been alerted to all American Express money order checks and other money order checks —
>
> "Mr. Quinn: Your honor, I don't think this is relevant to what we are talking about here.
>
> "THE COURT: I think it is relevant, the way he gets alerted to watching out for these checks. You are in effect asking him how he got into this, who the young lady was, why she presented the check.
>
> "Go ahead.
>
> "THE WITNESS: We had been alerted not only to American Express money orders that were stolen but also Nationwide money orders and this is not relevant to the case but Nationwide money orders had been given to all the merchants throughout the store in amounts from $80 to $85 and we have been fortunate to — if I may use the word — nab three people who have stolen hundreds of these checks in the store. We have meetings with salespeople, cashiers and so forth, not to take any money orders of any kind even down to the point of postal money orders. If it is sent in through the mail, we will take it. If it comes to $2 to $5, we will take it. But I recall that everyone of these money orders belonged to Credit Bureau and Merit System that does our work for us and we get letters every week, personal information of these money orders being sent out, numbers of the checks and so forth.
>
> "This is what had alerted the girl to these checks and to come to us with these checks.

"BY MR. QUINN:

"Q My question, Mr. Klein, to you was: Do you know the identity of the young lady that was working in the store?

"A I know the identity of every girl that works in our store, sir, but to point out specifically which one it was that brought it to me that specific moment, I would be unfair to say this is the party and bring the party down here." (Tr. 22-24).

The above quoted testimony of the Government witness, Mr. Klein, should not have been received. The question asked by attorney for Appellant related only to the name of the saleslady with whom Appellant spoke prior to seeing Mr. Klein. Instead of an answer responsive to the question, giving either the name or stating that he did not have such information, Mr. Klein set forth to "explain" his lack of an answer. The Court ruled the rambling "explanation" relevant and thus, permitted the witness to tell the jury

1. That there was an "alert" in effect concerning American Express Money Orders.

2. That in addition to American Express Money Orders, those issued by a company designated as "Nationwide" were also the subject of the "alert."

3. That American Express and Nationwide Money Orders had been stolen.

4. That "we" had apprehended three persons who had stolen "hundreds" of money orders.

5. That sales personnel of Morton's Department Store were informed through various meetings, to view with suspicion the production of a money order "of any kind even down to the point of postal money orders." (Tr. 23, 24).

Mr. Klein completed his monologue when after recital of the above noted statements, he told attorney for Appellant: "This is what had alerted the girl to these checks and to come to us with these checks." (Tr. 24).

Seemingly Mr. Klein was so overcome by the magnitude of the alleged wave of forgery efforts, that he failed to recall that the appellant presented only one check.

The next question by attorney for Appellant shows that his prior question had not been answered. He states, "My question, Mr. Klein, to you was: Do you know the identity of the young lady that was working in the store?" (Tr. 24, emphasis supplied).

There can be no question as to the adverse effect of the testimony of witness Klein upon the case of the Appellant. Within the scope of those few words, the situation changed its course. The Government in its opening statement had not mentioned the term "stolen." But witness Klein injected a new note. No longer was the Appellant merely one who had attempted to utter an allegedly forged money order - possibly (and probably according to Mr. Klein) Appellant was a thief.

In McCary v. State, 29 Ala. App. 642, 107 So. 2d 903 (1958), cert. den'd 268 Ala. 697, 107 So. 2d 906. the Alabama Court of Appeals considered the assertion that a question eliciting information about

other crimes directed to a sheriff by the prosecution had prejudiced the appellant. The Court stated:

> "The jury was therefore called upon to weigh facts against appellants for which they were not shown to be responsible, to have knowledge of, or to be connected with. We cannot say that their substantial rights were not probably prejudiced thereby. We think they were." 107 So. 2d at 906.

The jury was probably prejudiced against Appellant by the testimony of Witness Klein. Certainly there may be little doubt that the jury could have been substantially swayed by Witness Klein's testimony. See Leigh v. United States, 113 U.S. App. D.C. 390, 308 F. 2d 345 (1962).

Not only was Appellant viewed in the light of a thief - the attempt to utter a money order in the sum of $98.72 became part of a vast scheme "hundreds" of "checks" having been stolen and uttered to the loss of the business firms in the area. The Appellant's subsequent testimony as to how he came into possession of the money order undoubtedly was received with skepticism and disbelief.

The testimony of Government witness Klein (Tr. 23-24) could have had only one effect on the jury and that was detrimental to the appellant. The testimony was irrelevant and should have been excluded on that ground. However, even if the evidence is assumed, arguendo, to have been "marginally relevant," it should have been excluded. See Beatty v. United States, 377 F. 2d 181, 186 (5th Cir. 1967) reversed on other grounds, per curiam, 88 Sup. Ct. 234 (1967); United States v. Reed, 376 F. 2d 226 (7th Cir. 1967). The testimony of Witness Klein

was not responsive to the pending question and was irrelevant to a determination of the guilt or innocence of Appellant. It was highly prejudicial in that it tended to connect Appellant with the theft of money orders. Counsel for Appellant objected, but his objection was overruled. The admission of the testimony was prejudicial. While the trial court has discretion in determining the admissibility of evidence, the reception of this testimony was an abuse of that discretion and constitutes reversible error. Cf. Barnes v. United States, 124 U.S. App. D.C. 318, 365 F. 2d 509 (1966).

CONCLUSION

For the foregoing reasons the judgment of the District Court must be reversed and the case remanded with directions to grant Appellant's motion for judgment of acquittal or, in the alternative, to grant a new trial.

Respectfully submitted,

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March 4, 1968

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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,433

WALTER E. HOUGH, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

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DAVID G. BRESS,
United States Attorney.

FRANK Q. NEBEKER,
THEODORE ~~WEISMAN,~~
WILLIAM G. REYNOLDS, JR.,
Assistant United States Attorneys.

Cr. No. 831-66

QUESTIONS PRESENTED

In the opinion of appellee, the following questions are presented:

1) Was the evidence when construed in a light most favorable to the Government sufficient to allow the jury to conclude that the signature of the payee on the money order in question was written without the payee's authority?

2) Did the trial judge err in allowing a Government witness, in response to a question from appellant's counsel, to explain why as a result of the store's past experience with stolen money orders, all money orders were brought to the attention of the management for clearance?

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TABLE OF CASES

OTHER REFERENCES

* Cases chiefly relied upon are marked by an asterisk.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant, Walter E. Hough, was indicted on June 27, 1966 in a two count indictment for forgery.[1] The first count charged that appellant made and forged, with intent to defraud, an American Express Company Money Order. The second count charged that appellant passed and uttered to David E. Klein a forged American Express Company Money Order. On July 8, 1966, appellant pled not guilty to both charges. On August 2, 1967, appellant went to trial before Judge Howard F. Corcoran and a jury. The first count was dismissed after the Government's

[1] 22 D.C. Code § 1401.

opening statement with no objection from Government's counsel (Tr. 8). Appellant was convicted by the jury on the second count and was ordered imprisoned for a period of sixteen (16) months to four (4) years. This appeal followed.

The Government's Direct Case

The Government's evidence disclosed that on May 7, 1966, appellant and his wife entered the Morton's Department Store at 314 Seventh Street, N.W. in the District of Columbia. Appellant presented an American Express Money Order for $98.72 for the purpose of making a purchase and receiving cash (Tr. 14-16). A sales girl brought the money order to Mr. David Klein, the manager of Morton's. The money order was made out to Ronald Steven Williamson as payee and was endorsed on the back by a signature purporting to be that of Ronald Steven Williamson (Tr. 13). The payor of the money order was one Josephine Fletcher whose signature appeared at the proper place on the face of the money order (Tr. 14). Appellant also presented to Mr. Klein a Maryland Driver's license in the name of Ronald Steven Williamson (Tr. 14-15). When Mr. Kein noticed a discrepancy between the description of Ronald Steven Williamson on the driver's license and physical characteristics of the appellant who had presented it, he asked appellant if the check and identification was his. Appellant replied that it was. (Tr. 16, 27). Mr. Klein then called the Metropolitan Police Check and Fraud Squad.

The Government also presented evidence through the testimony of a janitor at the Check and Fraud Squad Building that when appellant accompanied the police officers down to the Check and Fraud Office, he went into a comode; the janitor noticed appellant leave the comode without flushing the toilet (Tr. 55); and that he (the janitor) then went into the comode stall to flush the bathroom and observed five money orders in the comode. Each of the five money orders found in the comode was signed "Ronald Steven Williamson" (Tr. 85). These five money

orders had similar identification numbers as the money order passed to Mr. Klein.[2]

Ronald Steven Williamson testified that the signature on the driver's license which appellant had presented for identification to Mr. Klein was not his, but that the license accurately listed his former address and his date of birth (Tr. 83). He further testified that he had made an application for a Maryland license, but that he had not received it. Later he made an application for a duplicate Maryland license which he did receive. He also testified that the signatures on the money order that appellant had presented to Mr. Klein were not his. Appellant and the Government stipulated that the signature on the other money orders which had been recovered in the comode were not Mr. Williamson's. There was a further stipulation that the signature on the money order in question was not the appellant's (Tr. 87).

During the direct examination of Mr. Klein, Mr. Klein responded to a question posed by the Assistant United States Attorney in the following manner (Tr. 13):

> Q (By the Assistant United States Attorney)—What happened, sir, concerning this check on May 7, 1966?
>
> A (Mr. Klein) When the gentleman came there, the girl presented the check to me. The gentleman wanted to make a purchase and he was with another lady. And I looked at the check. We had been getting many notices through the Credit Bureau . . .
>
> MR. QUINN: Objection, Your Honor, we are only concerned with this check.
>
> THE COURT: That is right.

But later in the trial during the cross-examination of Mr. Klein, the following colloquy occurred (Tr. 22, 23):

> Q (Appellant's Counsel) So, this is a busy Saturday morning, is that correct?
>
> A Yes.
>
> Q And you get many checks to approve.
>
> A Yes.

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[2] All the checks in question ended in a 900 series (Tr. 81).

Q And the young lady comes to you and gives you many checks and what she says to you is indeed hard for you to recall, is it not?

A No. No. What would be hard to recall?

Q It is my understanding from what you said that you don't know what the young lady's name was who talked with Mr. Hough before you did.

A No. Let me explain one thing if you will allow me to. We have been, as I have said before, and everyone in my store that ever looks at a check have been alerted to all American Express Money Orders checks . . .

MR. QUINN: Your Honor, I don't think this is relevant to what we are talking about here.

THE COURT: I think it is relevant, the way he gets alerted to watching out for these checks. You are in effect asking him how he got into this, who the young lady was, why she presented the check. Go ahead.

THE WITNESS: We had been alerted not only to American Express Money Orders that were stolen but also Nationwide Money Orders that had been given to all the merchants throughout the store in amounts from $80 to $85 and we have been fortunate to . . . if I may use the word . . . nab three people who have stolen hundreds of these checks in the store. We have meetings with salespeople, cashiers and so forth, not to take any money orders of any kind even down to the point of postal money orders if it is sent in through the mails, we will take it. If it comes to $2 to $5 we will take it. But I recall that every one of these money orders belong to Credit Bureau and Merit System that does our work for us and we got letters every week, personal information of these money orders being sent out, numbers of checks and so forth.

This is what had alerted the girl to these checks and to come to us with these checks.

The Appellant's Defense

The appellant's defense, presented through the testimoney of himself, his sister Carol and his common law

wife Sharon Williamson, was that he had received the money order in question from one Jake as a repayment of a debt, and that Jake had also given him the driving permit of Ronald Steven Williamson to use for identification.

Appellant's sister, Carol Hough, testified that at approximately 8:30 a.m. one morning in May 1966 one Jake[3] came to the appellant's apartment and gave the appellant a money order and another card in payment of a debt of twenty-five dollars ($25). (Tr. 91, 92, 98). She testified that the man known as Jake told appellant in her presence to go to Morton's Department Store and cash the money order and that he would call down and okay it. (Tr. 92). At first Carol Hough indicated that she did not know what the card was that Jake gave to appellant (Tr. 92). But later she said on cross-examination that the man called Jake had indicated that the card in question was a driving permit belonging to him (Tr. 101). She described Jake as a tall, slim dark skinned man with a moustache. Sharon Williamson, appellant's common law wife, testified that Jake had said that he had an account at Morton's but that he could not go down to cash the money order himself because he would be late for work.

The appellant testified that the man called Jake gave him the money order in question along with the driver's permit (Tr. 116). He then took the money order to Morton's and went to Mr. Klein to see about cashing the money order (Tr. 118, 119). The police soon arrived and asked appellant if the money order was his. Appellant testified that he told them that it was not (Tr. 119). Appellant denied having any prior knowledge of the other money orders which were found in the comode. (Tr. 118).

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[3] None of the defense witnesses knew "Jake's" last name, where he lived, what he did, or how he could be contacted (Tr. 91, 108-109, 130).

STATUTE INVOLVED

Title 22, District of Columbia Code, Section 1401 provides:

> Whoever, with intent to defraud or injure another, falsely makes or alters any writing of a public or private nature, which might operate to the prejudice of another, or passes, utters, or publishes, or attempts to pass, utter, or publish as true and genuine, any paper so falsely made or altered, knowing the same to be false or forged, with the intent to defraud or prejudice the right of another, shall be imprisoned for not less than one year nor more than ten years.

SUMMARY OF ARGUMENT

I

There is substantial evidence that the payee of the money order in question, Mr. Williamson, did not give anyone authority to sign his name on the money order. First, the payee, Mr. Williamson, testified at trial that he did not sign the money order. Second, the money order was presented by appellant together with a driver's permit purporting to be that of the payee, Mr. Williamson. Mr. Williamson testified that he had never received said driver's permit and that the signature on it was not his. Moreover, the Government's evidence disclosed that appellant had first told the manager of the store where he attempted to cash the money order that the money order and the driver's permit were his. Appellant later changed his story after police had arrived and said that the money order and permit belonged to one Jake. These facts in addition to the absence of any evidence that the payee, Mr. Williamson, had even known of the money order before this case arose would allow the jury to conclude that he did not give anyone authority to sign his name on the money order. Moreover, the fact that the money order in question was forged was never contested at trial.

II

Mr. Klein's mention of stolen money orders discovered in his store in the past was in response to appellant's counsel's cross-examination challenging his memory as to why and if a sales girl had come to him with the money order in question and what if anything she said to him. Mr. Klein merely pointed out that all sales girls in Morton's were requested to come to the management with money orders given to them by customers because of the store's past bad experience with said orders. Mr. Klein did not infer that appellant was in anyway connected with the instances in the past. Mr. Klein's answer was responsive to the line of questioning of appellant's counsel and was not prejudicial to the appellant.

ARGUMENT

I. The jury could properly conclude from the evidence presented at trial that the signature of Ronald Steven Williamson was forged.

(Tr. 10, 14, 15-16, 26, 75, 84-85, 101, 118, 137)

The Government presented evidence that appellant attempted to cash at Morton's Department Store a money order in which one Ronald Steven Williamson was the payee. This money order had a signature on the front and an endorsement signature on the back purporting to be that of Ronald Steven Williamson. The appellant also had a driving permit which he attempted to use for identification in cashing the money order which on its face belonged to one Ronald Steven Williamson born on January 8, 1941 who resided at 7604 F Street, Seat Pleasant, Maryland (Tr. 15). This driver's permit also contained a signature which purported to be that of Ronald Steven Williamson (Tr. 14). Ronald Steven Williamson testified at trial that none of the signatures contained on the money order or the driver's permit were

his (Tr. 84-85).[4] The appellant told Mr. Klein, the manager of Morton Department Store, in answer to a direct question that the money order and the Maryland driving license were his (Tr. 16, 26).[5] Although there was no indication from the face of the money order or from any other evidence presented at trial that the person who signed Mr. Williamson's name did so with authority of Mr. Williamson, appellant now argues that the evidence did not justify the jury's conclusion that the money order was signed without Mr. Williamson's authority.

Where a person signs the name of another existing person to an instrument and holds this out to be the signature of that person the instrument has been held to be forged or falsely made. *Easterday* v. *United States*, 53 App. D.C. 387, 292 F.2d 664, *cert. denied*, 263 U.S. 719 (1923); *United States* v. *Greever*, 116 F.Supp. 755 (D.C.D.C. 1954). An exception is when the signer has been given authority to write the signature by the person whose name he signs. See generally, *State* v. *Gordon*, 48 P.2d 447 (Sup. Ct. Utah 1935); *State* v. *Charles D. Philips*, 256 N.C. 445, 124 S.E.2d 146 (1962). The reason for this exception is of course that if the signor signs with authority he has no intent to defraud thus no forgery is commited. *Johnson* v. *State*, 370 S.W.2d 327 (Ct.App. Texas 1943).

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[4] Mr. Williamson testified that he had in fact lived at 7605 F Street, Mount Pleasant, Maryland, and that he was born on January 8, 1941. When he first applied for a Maryland driver's license, the license never reached him. Later he applied for and obtained a duplicate license which was identical to the one in question except for the false signature on the one in question. The driver's license in question had presumably been stolen and Mr. Williamson's name signed on it without his knowledge or authority.

[5] Later after the police arrived appellant changed his story; he denied being the owner of the money order and driver's permit. He then said that he had received them from one Jake Williamson (Tr. 75). Significantly appellant's sister testified that this man known as Jake had told the appellant that the money order was his (Tr. 101).

In the present case there is ample evidence that Ronald Steven Williamson did not authorize anyone to sign his name to the money order which appellant attempted to cash. First, Mr. Williamson testified that he did not sign the money order (Tr. 85). Second, the money order and the driver's permit which were introduced into evidence were presented together by appellant and Mr. Williamson testified that he had never seen this driver's license presumably because it had been misplaced or stolen before it reached him (Tr. 84). Moreover, according to appellant's own evidence, the man known as Jake who gave him the money order stated positively that it belonged to him which is an affirmative indication that Mr. Williamson had not given him permission to sign it (Tr. 75, 101). Indeed, appellant's effort to deny any knowledge of the other money orders with Mr. Williamson's signature on them which were found in the comode indicates that he had knowledge of the falsity of the signature in question (Tr. 118).

The fact that the signature of Mr. Williamson had been forged was never contested throughout the trial. The crucial factual issues in the case were whether appellant had done enough to be held for uttering the money order, and whether he had knowledge that it was forged. Thus in his opening statement and again when stating his reasons for making a motion for judgment of acquittal, appellant's counsel discussed only these two points (Tr. 10, 137).

Despite the substantial evidence referred to above which tended to show that the instrument was false, counsel for appellant did not ask Mr. Williamson on cross examination anything about whether he had given authority to an unknown person to sign his name on the money order in question. The case turned on other issues; the fact that the money order was falsely made was clear from the uncontested testimony of the Government witnesses. We submit that especially in a case like this one where the issue of falsity is not contested, the fact that the signature on the money order was written without Mr. Wil-

liamson's authority can be inferred from the facts above and does not have to be proven by Mr. Williamson's direct statement that he gave no one permission to sign his name. See *United States* v. *Stradley*, 295 F.2d 33 (4th Cir. 1961), where lack of authority was inferred from the payee's testimony that he had no conversation with the defendant.

II. When the appellant's attorney at trial in effect sought to impeach the testimony of a Government witness by questioning his memory of how he became involved in verifying the money order in question, the trial judge did not err in allowing said witness to explain why such money orders were routinely brought to his attention.

(Tr. 20, 22)

Appellant's attorney at trial asked Mr. Klein three times if he remembered the name of the sales girl who he had testified had brought the money order in question to his attention for the purpose of having it verified (Tr. 20, 22). The first time he was asked Mr. Klein explained that he did not remember the name of the sales girl because the incident occurred more than a year before and because he routinely gets many such checks to verify especially on Saturdays (Tr. 20). Appellant's attorney was apparently not satisfied with this answer because he proceeded to ask Mr. Klein about the identity of the sales girl a second time (Tr. 20). Later in the cross-examination, appellant's attorney asked the following questions (Tr. 22):

> Q And the young lady comes to you and gives you many checks and what she says to you is indeed hard for you to recall, is it not?
>
> A No. No. What would be hard to recall?
>
> Q It is my understanding from what you have said that you don't know what the young lady's name was who talked with Mr. Hough before you did.

Mr. Klein then proceeded to explain over appellant's objection that his store had a policy of requiring sales girls

to have all money orders of any kind even postal money orders which customers attempt to cash brought to the attention of the management for verification. The reason for this policy was that the management had a list of money orders which had been reported stolen and they had been able to catch three people who had stolen hundreds of such checks. Therefore, sales girls were instructed to bring money orders to the management as a precautionary measure to be checked against the list of stolen money orders. Appellant argues that the judge erred in allowing Mr. Klein to explain this policy which led the sales girl to bring the money order to his attention. Appellant contends that Mr. Klein's response prejudiced the appellant by in effect telling the jury that appellant was part of a vast scheme in which hundreds of money orders had been stolen and uttered. Appellant's brief at 13.

Ordinarily the determination of the relevancy of testimony lies largely within the discretion of the trial court. See *Hardy* v. *United States*, 118 U.S. App. D.C. 253, 254, 335 F.2d 288 (1964). The trial court in this case in the exercise of its discretion ruled that Mr. Klein's response was relevant to the question asked him in that it explained how and why the sales girl brought the money order to him.[6]

Assuming *arguendo* that Mr. Klein's response was not responsive, or at least only partially responsive, we submit that it was in no way prejudicial to the appellant. Mr. Klein did not say or imply that appellant was in any way involved with the instances in the past when bad money orders had been disclosed in his store. Compare *Hodge* v. *United States*, 75 U.S. App. D.C. 332, 126 F.2d 849 (1942) which involved testimony concerning the past

[6] Appellant contends that counsel's question which drew the response in question from Mr. Klein related only to the identity of the sales girl. But the question as to the sales girl's identity had already been asked and answered (Tr. 20). The question, if any, which was pending at the time of the response in which appellant objects was a vague question challenging Mr. Klein's memory of whether the sales girl brought the money order to him and what she said at the time. Mr. Klein's response was to explain why the sales girl came to him.

offenses of an accused. He did not even remotely imply that appellant was involved in a scheme to steal money orders, or that appellant was a thief. Mr. Klein merely explained that because of past bad experiences with money orders, sales girls were instructed to bring all money orders to the attention of management. This Court has often held that in order to constitute reversible error the evidence objected to must be prejudicial to the accused. *Beck* v. *United States*, 62 App. D.C. 223, 66 F.2d 203 (1933); *Starr* v. *United States*, 105 U.S. App. D.C. 91, 284 F.2d 377, *cert. denied*, 359 U.S. 936 (1959). Since Mr. Klein's testimony had no probative value in determining appellant's guilt, and in fact could not reasonably be construed to reflect negatively on appellant's case, its admission was not prejudicial to the appellant.

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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REPLY BRIEF FOR APPELLANT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

NO. 21433

WALTER E. HOUGH,

Appellant,

V.

UNITED STATES OF AMERICA,

Appellee.

Appeal From The United States District Court
For The District of Columbia

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April 30, 1968

QUESTIONS PRESENTED

After reviewing both Appellant's opening brief and Appellee's brief, the Court should consider the following questions:

1. Did the Government present circumstantial evidence which, when construed in a light most favorable to the Government, was sufficient to allow the jury to conclude beyond a reasonable doubt that the signature of the payee on the money order in question was written without the payee's authorization?

2. Did the trial judge err in allowing a Government witness, over objection, to "explain" why all money orders were brought to him for approval prior to cashing?

CASES CITED

TRANSCRIPT REFERENCE

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REPLY BRIEF FOR APPELLANT

Appellee on page 8 of its brief recognizes and agrees with Appellant's contention that authorization is a valid defense to an indictment for forgery. In fact, Appellee cites the two cases principally relied upon by Appellant. Having tacitly agreed that the lack of authority must be shown by the Government, Appellee argues that the lack of authority was shown. Appellee first points out the undisputed fact that Witness Williamson testified that he did not personally sign the money order. Then Appellee marshalls facts from the record to show that the jury could have inferred that Witness Williamson did not authorize the signing of his name to the money order in question.

As a matter of law, the statement of the purported "signer" that his signature was not placed on the instrument by him is insufficient standing alone to support a conviction for forgery. State v. Charles D. Phillips, 256 N.C. 445, 124 S.E. 2d 146 (1962); State v. Gorham, 48 P. 2d 447 (S.Ct. Utah 1935). The Government is not required to ask specifically whether or not the witness authorized the signing of his name if the other testimony of the witness shows that he did not authorize the signing. For example in United States v. Stradley, 295 F. 2d 33 (4th Cir. 1961), relied upon by the Government, the trial court had allowed the Government to present rebuttal testimony from Witness Huggins, who had, according to the Defendant, authorized her to sign his name to the check. On appeal the question was whether the Government should have been allowed to present the rebuttal testimony. The Fourth Circuit held that accepting the rebuttal testimony was not error because the Government witness had stated explicitly on direct examination that "he had no conversation with the defendant with regard to the check."

After a thorough review of the Stradley case, supra, Appellant is of the opinion that the case is easily distinguishable on the facts. In that case a Mr. Huggins, whose name was allegedly forged to a Government check made payable to his order, did testify that he did not authorize the defendant, Mrs. Stradley, to sign his name and use the money. He also testified he had no conversation with the defendant with regard to the checks. There is no testimony in the

present proceeding of this nature. Witness Williamson did not say that "he had no conversation with the defendant [or with the third person who signed the money order] with regard to the check" and did not say that the signature was unauthorized. He was not even asked whether he had known about the money order prior to the Government's initial contact with him.

Appellant continues to contend vigorously that the Government erred when it failed to ask its witness, Ronald Steven Williamson, whether or not he had authorized anyone to place his signature on the money order in question.

In response to Appellant's assignment of error based upon the Court's admission of Witness Klein's "explanation," the Government argues, inter alia, that Appellant could not have been prejudiced by the admission of the testimony. Whether or not the testimony was of a type that could have prejudiced Appellant's case is best determined by the Court upon the testimony itself. The function of this reply brief is to help the Court select the proper test to be used in determining whether the error was "prejudicial." Appellee suggests that the evidence was not prejudicial and cites Starr v. United States, 105 U.S. App. D.C. 91, 264 F. 2d 377, cert. denied 359 U.S. 936 (1959) to show the test of "prejudice" the Court should in Appellee's opinion adopt. In Starr, supra, the Court stated that the evidence objected to must be prejudicial to the accused in order for its admission to

constitute reversible error. The Court continued to state that in criminal, as well as in civil cases, the Appellant must show that he was prejudiced by the error. Appellant grants that reversal should not result from mere "technical errors," but strenuously urges the Court to consider the effect of this testimony on the jury. The inquiry which should be used to determine whether the evidence is prejudicial is whether that evidence could have had "substantial influence" on the jury. Leigh v. United States, 113 U.S. App. D.C. 390, 308 F. 2d 345 (1962). As set forth in his opening brief, Appellant contends that the evidence could have substantial influence on the jury and is therefore "prejudicial."

Wherefore, for the foregoing reasons the judgment of the District Court must be reversed and the case remanded with directions to grant Appellant's motion for judgment of acquittal or, in the alternative, to grant a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of April, 1968, served the foregoing Reply Brief for Appellant, by mailing copies thereof, first-class mail, to the following:

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